



November 12, 2015

Mr. Jess Villamayor, Project Manager  
Department of Toxic Substance  
Brownsfields and Environmental Restoration Program-Chatsworth Office  
9211 Oakdale Avenue  
Chatsworth, California 91311-6505

RE: REVISED RCRA FACILITY INVESTIGATION WORKPLAN PERIMETER AREAS OF FACILITY

Dear Mr. Villamayor:

Quemetco, Inc. writes in response to DTSC's October 30, 2015 letter enclosing its Modified Workplan detailing the sampling, testing and other related investigation requested by DTSC regarding the areas surrounding Quemetco's battery recycling facility located in the City of Industry. As a preliminary matter, it remains Quemetco's goal to cooperatively work with DTSC in an effort to develop an agreed upon workplan that satisfies both parties' goals in this matter. However, and as discussed more fully below, the Modified Workplan fails in numerous critical aspects to take into consideration the specific demographics of the surrounding community, the technical and practical implications of type and scope of testing being mandated, and other relevant circumstances related to the perimeter of the Quemetco facility. As such, it is Quemetco's position that the workplan requires significant further modification before substantial testing should begin.

As a preliminary matter, it is unclear to Quemetco what authority DTSC is relying on in its October 30, 2015 letter which effectively re-writes Quemetco's Revised Workplan and mandates immediate implementation of the same. While DTSC is obviously granted authority to oversee investigations and remedial plans in the scope of the Hazardous Waste Control Act, the Hazardous Substance Account Act, and others, in this instance, DTSC has made none of the findings required to issue an order under any such statutory scheme. And particularly troubling to Quemetco is the fact that, given the expansive scope of testing requested by DTSC in its Modified Workplan, Quemetco is unclear how DTSC would be able to make such a showing to support this scope of testing, which in many instances would have little to no relevance to any emissions originating from Quemetco's facility.

Further, having thoroughly reviewed DTSC's Modified Workplan, Quemetco raises the following concerns regarding the scope, efficacy and technical approaches specified in the same.

**General Overall Comments**

1. There is no evidence to support the expansive testing area and scope, as defined in the DTSC's Modified Workplan. Instead, the Modified Workplan presumes that the entire testing area has been affected by a variety of elements and chemical compounds (contaminants of concern, or COCs) resulting from a single source – Quemetco, Inc. The Modified Workplan fails to take into account that these same elements and COCs are common in urban environments, and/or are found in the defined testing area due to sources other than Quemetco. As such, the Modified Workplan places the burden on Quemetco to undertake extensive testing and the collection of massive amounts of data, before Quemetco is offered the opportunity to rebut this flawed presumption.

Further (and as discussed further below), the Modified Workplan requires extensive sampling, laboratory analysis, and delineation protocols that will generate literally hundreds of thousands of data sets. Pursuant to the Modified Workplan, this data will be subject to either a very narrow (and perhaps erroneous) interpretation that Quemetco is the sole source of the COCs, or data that will be unable to be accurately interpreted as to the true source of the COCs that may be identified.

Quemetco's August 20, 2015 proposed Workplan utilizes many of the same analytical protocols, but provides a more measured and proven sampling protocol that responds to data as it is collected. Given that there is little to no evidence to draw a conclusion that impacts specific to Quemetco merit the high degree of delineation DTSC's modified Workplan proposes, this type of measured approach is warranted. Quemetco's Workplan seeks to generate evidence of a possible impact through a step-by step process that is universally used to gather evidence of health and environmental impacts. As evidence is gathered, further screening and/or delineation to follow such evidence can be employed. As noted in that Workplan, we believe that the first ¼ mile radius from the Quemetco facility should be sampled under a rigorous screening protocol before decisions concerning detailed delineation or sampling beyond that distance are established ("Compile and assess data and adjust sampling plans for delineation and extent"). This will be especially important should the initial sampling demonstrate that Quemetco's "fingerprint" is not present in the area immediately surrounding the plant. Commitment to the sampling proposed by DTSC's Modified Workplan through Zone 2 (over 1,000 residential lots to start) and then potentially out to a mile may require unnecessary delineation of a problem that does not exist.

The sheer magnitude of samples and time required for all the sampling under DTSC's Modified Workplan is unprecedented for a situation in which there is little to no evidence available to justify beginning a sampling program with such a rigid, detailed delineation over such large areas. Within the required sampling area in Zone 2, for residential properties alone, there is a total of approximately 589 residential lots and 456 mobile home lots with samples at 10 locations on each site and five depths at each location, or a potential total of over 52,000 XRF samples; the minimum number of samples in these areas that are required to be analyzed in the laboratory is likely to exceed 12,000 samples. Using five two-person teams for sampling, the time to sample the 1,045 residential properties alone will likely exceed eight months. Using a similar approach, under the scenario mandated in DTSC's Modified Workplan, Quemetco estimates that the sampling of the creeks, public-rights of way, and storm catch basins will likely to take four to six months and the proposed sampling for the commercial/industrial buildings will take an additional four to six months.

2. DTSC's Modified Workplan also fails to adequately address the complexities that will certainly arise in attempting to "fingerprint" Quemetco's lead emissions. In Section 2.1.3 of the Modified Workplan, DTSC has identified Problem 3 as follows: "Constituents (particularly lead) that may have been dispersed and deposited from Quemetco airborne stack emissions or by other means should be characterized and distinguished from similar constituents that are commonly found in most urbanized areas." This statement is followed by a recognition that lead was and continues to be a ubiquitous environmental contaminant, most notably from the burning of leaded gasoline and the use of leaded paint. The Modified Workplan then concludes that " Because of the likelihood that lead in the environment may occur from anthropogenic sources other than the Quemetco operations, it is important for Quemetco to characterize their emissions of lead and other contaminants (e.g., antimony, arsenic, tin, dioxins and furans) in order to determine Quemetco's radius of influence for deposition/accumulation."

DTSC's Modified Workplan then goes on to state that (see pg. 13) "Because of the modeled dispersion footprint of Quemetco's smelter-derived emissions (Environmental Group, Limited, 2007), Proposition 65 notifications, and various Health Risk Assessments prepared for DTSC and the SCAQMD, it will be assumed by DTSC that Quemetco is responsible for the lead found at sample locations within those footprints ***unless Quemetco adequately "fingerprints" their lead emissions and demonstrates otherwise.***" (Emphasis added.) The modified Workplan then outlines various approaches to characterizing sources of lead and other metals found in the environment (see pages 8 to 9, and Section 3.2 on pages 13 to 16).

Quemetco has begun efforts to fingerprint their lead emissions and remains confident that these efforts will be successful. Quemetco believes that the best method for characterizing Quemetco-derived constituents in the environment surrounding the facility is to determine the relative concentrations and ratios of specific metals or metalloids in area soil samples that are likely to be impacted with Quemetco COCs. However, Quemetco remains cognizant of the fact that some research concludes that there is no “foolproof” method to identify the source of lead and other metals that are ubiquitous in the environment. As such, Quemetco is concerned with the Modified Workplan’s premise that “Quemetco *adequately* “fingerprint” their lead emissions” as the sole control as to responsibility for any lead found within a mile of the plant. Without additional clarification regarding the certainty with which these fingerprinting efforts will be required to identify emissions from the Quemetco facility, Quemetco finds this portion of the Modified Workplan problematic.

3. The more thoughtful sequential approach to sampling as proposed in the August 30, 2015 Workplan is preferable compared to an arbitrary and massive immediate response with little or no recognition as to evidence of any impacts and the consequences of generating such data. For example, the collection of samples for analysis of COCs such as benzene, PAHs, and dioxins/furans fails to recognize the ubiquitous nature and alternative sources (other than Quemetco) for these compounds in the urban environment. Adding these COCs to the sampling program blurs the focus and objective of solving Problem 1 and Problem 3 posed in the Modified Workplan (see pages 2-3) and adds an unnecessary complexity to the sampling approach since “fingerprinting” these COCs as to any identifiable source (let alone Quemetco) is virtually impossible.

It is also possible that such sampling may yield concentrations of COCs that exceed risk based health screening levels in the areas that do not coincidentally demonstrate any sources of lead or metals from Quemetco. This raises the question as to what entity would then take responsibility for the discovery and mitigation of such COCs, absent a defined source or responsible party. Thus, restricting the sampling to lead and associated metals, as proposed in Quemetco’s Revised Workplan, represents a more focused, rational, and productive initial approach to responding to the Problem set identified in DTSC’s Modified Workplan.

4. The need for Interim Measures Workplans and Emergency Interim Measures Workplans is noted in several sections of the modified Workplan, but Quemetco remains uncertain as to what DTSC is requesting in this context. The purpose and expectations as to the content of such Workplans needs to be further defined by DTSC in order for Quemetco to adequately address such requests.

### **Specific Comments**

Throughout the Modified Workplan, DTSC has established screening levels and other processes which trigger the need for additional testing and/or laboratory analysis to be performed by Quemetco in relation to the samples collected in rights-of-way and creek beds, residential properties, commercial industrial properties, and storm drains/soil and sediment sampling. Following are Quemetco's more significant concerns regarding the approaches and protocols demanded by DTSC.

#### **Public and Residential Rights-of-Way**

1. DTSC has increased the percentage of soil and sediment samples requiring laboratory analysis found in rights-of-way from 10% to 20%. This increase effectively negates the efficiencies that can be gained by utilizing the XRF to identify areas with significant impacts from the metals of concern and focusing the testing efforts on those particular locations. For purposes of evaluating the rights-of-way, further correlation by doubling the number of samples evaluated by a laboratory has very little practical benefit and is not warranted under these circumstances.
2. In instances where insufficient soil or sediment is available for testing, DTSC's Modified Workplan requires the collection of samples for laboratory analysis through tape-lift, wipe, or HEPA vacuum sampling. Attempting to categorize and delineate impacts to this level of detail within these ever changing, heavily traveled areas that are inherently impacted by various transient sources and associated constituents is of little to no value.
3. Step out sampling (from 15 to 50 feet in four directions from high XRF sample results) to achieve this degree of delineation in these types of heavily traveled and ever-changing areas is of little to no value. The planned XRF sampling should serve to identify if these areas are heavily impacted by lead and other metals.
4. On page 5, the Modified Workplan states that if XRF analysis of hardscape (asphalt or concrete) indicates embedded lead concentrations higher than 60 mg/kg for residential areas or 240 mg/kg for commercial/industrial areas, then Quemetco will notify the local agency (city or county) that there is lead embedded in the asphalt at concentrations of concern. There are also cautions about future removal and possible disposal of such material. Quemetco should not be responsible for such notifications; the implication would be that Quemetco is responsible for such lead concentrations when that may not be the case. Notification responsibility should rest with DTSC.

#### San Jose Creeks and Puente Creek

1. The Modified Workplan establishes that a Threshold Effects Level (TEL) of 35 mg/kg for lead be used for comparison to the XRF sampling in the San Jose and Puente Creeks. Applying this ecologically based level (derived from toxicity bioassays and benthic community metrics) does not account for the realities of these intermittent storm water channels. These are urban storm water concrete-channeled conveyance systems without any evidence of thriving benthic communities. The creeks are replete with debris, wastes, and impacts from runoff from myriad sources upstream of the Quemetco facility. The creek beds have been scoured many times over the years from storm water discharges. There is simply no evidence to support a finding that this approach would meaningfully assist in determining the impacts of Quemetco's operations on these environments.
2. DTSC proposes collection of samples for laboratory analysis through tape-lift, wipe, or HEPA vacuum sampling. Attempting to categorize and delineate impacts to this level of detail within an environment that lacks aquatic species of concern and is subject to significant alteration from rainfall and other unknown sources is of little to no value. In a similar manner, the proposed step out sampling (from 15 to 50 feet in four directions from high XRF sample results) to achieve this degree of delineation within this environment is also of little to no value.
3. The proposed XRF sampling alone (with 10% of sediments or soils sent to the laboratory) should serve to identify if these areas are heavily impacted by lead and other metals.

#### Residential Properties

For residential properties, DTSC's Modified Workplan requires the following: "If XRF readings are higher than 60 mg/kg, the samples will be sent to a fixed analytical laboratory for analysis. A minimum of 20% of the soil samples will be submitted for fixed analytical laboratory analysis. Twenty percent (20%) of soil samples from the top two sampling intervals will be sieved with a #60 sieve and submitted for organic COC laboratory analysis, except for dioxins/furans. One sample, wherever the highest XRF lead value is indicated, will be submitted for dioxins/furans at each residential and mobile home lot actually sampled in Zones 2 and 3. For each residential and mobile home lot, the sample with the highest lead concentration will also be submitted to a fixed analytical laboratory for Synthetic Precipitation Leaching Procedure (SPLP) analysis to estimate the leaching potential of contaminants to ground water." Quemetco notes the following critical issues with this approach:

1. The Modified Workplan requires ten (10) samples per residential lot, which in many cases will result in extremely short distances between sample points. Quemetco believes that five (5) samples per residential lot, as proposed in the August 20, 2015 Workplan, is more

- practical with respect to spatial considerations and will provide the degree of delineation necessary to achieve the goals of this testing.
2. DTSC further proposes that all XRF samples exceeding 60 mg/kg of lead be submitted to the laboratory, and has increased the percentage of soil and sediment samples requiring laboratory analysis from 10% to 20%. This increase in laboratory testing negates the efficiency of using the XRF for identifying areas with significant impacts from the metals of concern. For purposes of evaluating the residential properties, further correlation of XRF results by submitting samples above 60 mg/kg of lead as well as doubling the number of samples that go to the laboratory is excessive and does little to achieve the goals of this testing. The planned XRF sampling alone (with 10% of soils sent to the laboratory) should serve to identify if these areas are significantly impacted by lead and other metals. If such impacts are discovered, more complete sampling and delineation may be warranted as a result. To move the investigation forward expeditiously, we must rely more on the proven technology that is available to us. The hand held XRF unit is a highly capable device and is capable of analyzing for all Title 22 metals not just lead. At best, a small subset of samples would be all that is needed to confirm results (i.e., 5 to 10 %). While Quemetco believes that additional confirmation samples if the XRF readings are near the CHSL standard (as submitted in their Revised Workplan), for the reasons stated above, such extensive laboratory sampling is not appropriate at this time.
  3. Please refer to General Comment No. 3 above with respect to submission of samples to the lab for analysis of COCs and dioxins/furans on each of 1000 properties.
  4. The proposed submission of a single sample from each residential property for SPLP analysis has no relevance to the primary objective of the sampling. There is no evidence to suggest that groundwater in the area has been impacted by lead or other metals and, thus, that SPLP analysis is required for each of over 1045 properties.

#### Commercial/ Industrial Properties

DTSC's Modified Workplan notes the existence of ninety-nine (99) commercial buildings in Zone 2 and that testing must be performed on each of these properties. XRF samples will be collected within each property at all downspout discharge points, upon flat building rooftops at a rate of one (1) sample per every 400 ft<sup>2</sup> of rooftop, upon facility grounds (hardscape) at a rate of one (1) sample per every 1000 ft<sup>2</sup> of hardscape (preferentially along drainage ways), and from pervious areas with a surface area >100 ft<sup>2</sup>, excluding raised (>12 inches) landscaping areas at the rate outlined below:

- 100 ft<sup>2</sup> to 250 ft<sup>2</sup> - 1 shallow boring
- 250 ft<sup>2</sup> to 500 ft<sup>2</sup> - 2 shallow borings

- >500 ft<sup>2</sup> – 3 shallow borings

XRF soil samples will be collected from the previous areas at five depth intervals in the same manner as in residential areas and evaluated with the XRF unit. The sampler will also log each boring at the time of sampling and provide a description of the soils encountered, include depths where distinct changes in the material type are identified. Downspout discharge points, rooftop samples, and facility grounds (hardscape) samples with an XRF reading higher than 240 mg/kg for lead will have physical dust samples collected as a vacuum sample( or alternative method)sent to a fixed laboratory for analysis. Soil/sediment samples with an XRF reading higher than 240 mg/kg for lead will have a physical soil sample collected and sent to a fixed laboratory for analysis. A minimum of 20% of the dust samples and 20% of the soil samples will be submitted for fixed analytical laboratory analysis. In addition, 20% of soil samples will be submitted for organic COC laboratory analysis, except for dioxins/furans. One sample, wherever the highest XRF lead value is indicated, will be submitted for dioxins/furans, based on field observations, at each commercial/industrial property actually sampled in Zones 2. These testing protocols are unwarranted for the following reasons:

1. The collection of samples for delineation on rooftops for every 400 square feet is excessive and unnecessary given the context of the potential exposure and possible impacts (e.g., for a 10,000 square foot building, 25 samples will be required; compare this to a 10,000 square foot residential lot wherein 10 samples are proposed by DTSC). A much wider spaced grid is more appropriate and will result in satisfying the objective of determining if any significant metals are on a rooftop.
2. The degree of delineation for 99 buildings, including collection of physical dust samples and the all other soils from areas exceeding 240 mg/kg lead negates the efficiency of the use of the XRF for identifying areas containing meaningful quantities of the metals of concern. For purposes of evaluating the commercial/industrial properties, further correlation of XRF results by submitting samples above 240 mg/kg of lead as well as doubling the number of samples that go to the laboratory is not warranted. The planned XRF sampling alone (with 10% of soils/dust samples sent to the laboratory) should serve to identify if these areas are significantly impacted by lead and other metals. If such impacts are discovered, more complete sampling and delineation may be warranted as a result.
3. Please refer to General Comment No. 3 above with respect to submission of samples to the lab for analysis of COCs and dioxins/furans on each of 99 properties.



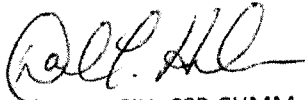
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Storm Drains, Surface Soil and Deposition/Accumulation Sediment Sampling

The transmittal letter indicates that DTSC is "desirous of beginning the sampling" of the catch basins and public rights -of way "before the full on-set of the rainy season". Given the historical presence of the metals of concern being studied through this testing, and the obvious fact that rain has historically fallen on these areas in great frequency and amount, Quemetco is unclear why the on-set of this year's rainy season would be a critical factor in expediting this sampling.

Quemetco remains ready and willing to engage in further meaningful discussions regarding the above and additional modifications to the workplan to address the same.

Sincerely,



Daniel (Dan) L. Helman, CIH, CSP, CHMM, REM  
Vice President, Environmental, Health & Safety Compliance  
RSR Corporation  
2777 Stemmons Fwy., Suite 1800  
Dallas, TX 75207  
Office: 214.583.0437  
Cell: 469.610.9525  
Fax: 214.631.6146  
Dhelman@rsrcorp.com

Cc: See next page

cc:

Mr. Philip B. Chandler, R. Geophys  
Unit Chief  
Department of Toxic Substances Control  
Brownsfields and Environmental

Mr. Gerry Manley, Manager  
EH&S Compliance  
RSR Corporation  
2777 Stemmons Freeway, Suite 1800  
Dallas, Texas 75207

Mr. Richard Freudenberger  
WSP Environmental & Energy  
2025 Gateway Place, Suite 435  
San Jose, California 95110

Ms. Rebecca Overmyer-Velasquez, Coordinator and  
Mr. Richard H. Kamimura, Co-coordinator  
Clean Air Coalition of North Whittier and Avocado Heights  
13022 Via Del Sol Avenue  
Whittier, California 90601

Mr. Edwin Pupka  
Senior Enforcement Manager  
Office of Engineering and Compliance  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, California 91765-4178

Ms. Susana Lagudis  
Public Participation Specialist  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013

Mr. Robert Kou  
Branch Chief  
Environmental and Emergency Response Program  
Department of Toxic Substance Control  
9211 Oakdale Avenue  
Chatsworth, California 91311

Mr. Farshad Vakili  
Office of Permitting  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200